U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

DATE: **FEB 2 1 2012** OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mary Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the arts, sciences or business, or as a member of the professions holding an advanced degree. The petitioner seeks to work part-time as founder of [redacted] and also as an advertiser doing business as [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and evidence of past and recent activities.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The sole issue in contention in the director's decision is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on August 17, 2010. On that form, the petitioner provided the following information about the proposed employment:

Job Title	Founder
Nontechnical Description of Job	Manage all company operations, formulate policies & provide overall direction
Is this a full-time position?	No (20 hrs. per week)
Wages	$35,000 per year

On his résumé, the petitioner provided the following description of his current work:

- Founded a company called [redacted], [redacted] which aims to do technology based network advertising
- Provisional Patent Filed – A self sustaining methodology for generating advertisement revenues
- Developed and authenticated ad-serving methodology which rivals the best in business
- Company [redacted] collaborating with educational institutes like University of California Los Angeles (UCLA), Indian Institute of Technology – Bombay (IITB) & California Institute of Technology (CalTech)

The petitioner submitted materials such as a table marked "Economic Crises and Higher Education Colleges," but no evidence of the active collaborations with UCLA, IITB or CalTech.

The petitioner submitted several witness letters attesting to his academic work. None of the witnesses claimed any expertise in advertising or advertising consulting, and none of them had much to say about the petitioner's present work with [redacted] except to acknowledge its existence and predict its eventual success. For instance, [redacted] Houston, Texas, stated:

> [The petitioner] is leveraging the skills acquired at [redacted] and his years as a professional in the Information Technology Industry to deliver solutions and service for the clients. The company operates at the interface of educational institutions and industries and its revenue model is advertising. It is operating at break-even for now and once the necessary funding for expansion is secured, it aims to generate huge profits and hire many high skilled workers.

The AAO notes that [redacted] also discussed the petitioner's Massachusetts Institute of Technology (MIT) master's thesis, which "focuses on assembly ramp-ups in the auto industry and how due to various factors the US auto industry is unable to compete globally due to delays in vehicle launches." [redacted] claimed that the petitioner's "recommendations were implemented and resulted in . . . major restructuring of the US automotive industry." The record contains no evidence to support [redacted] claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

[redacted] lead engineer at the [redacted], Bedford, Massachusetts, previously collaborated with the petitioner at MIT. [redacted] stated that the petitioner "has developed a very novel ad-optimization technique. This venture of his will not only generate revenues for American manufacturers and higher-education institutions, but will create jobs for many Americans in these

recessionary times." [redacted] also stated that the petitioner "has been successful in selling his business process to several institutions of higher-education to help bolster their financial position to keep tuition rates down, while maintaining key faculty and staff. His process . . . has resulted in avoiding lay-offs or passing additional tuition fees to their students." [redacted] identified no examples, and the record contains no evidence from any "institutions of higher-education" to corroborate this claim.

Other witnesses, many of them MIT faculty members, praised the petitioner's graduate work while offering vague predictions for the future success of [redacted]. For example, [redacted] senior procurement and supply chain manager for [redacted] Houston, Texas, called the petitioner's new venture "another example of [the petitioner's] focus on solving complex problems with multiple deliverables." MIT [redacted] contended: "Once [the petitioner's business plan] is effectively executed, it will not only generate tremendous profits but also create jobs for the skilled American workforce in these recessionary times."

The petitioner's initial submission included no documentary evidence to show what [redacted] has done or how far it has come in implementing its business plan (which is likewise absent from the record).

On October 4, 2010, the director instructed the petitioner to "submit documentary evidence that establishes that the petitioner's proposed employment is national in scope" and which shows that the petitioner has "a past record of specific prior achievement that justifies projections of future benefit to the national interest."

In response, the petitioner documented his attendance at various conventions. The petitioner also submitted a partial copy of a manuscript of a scholarly article, [redacted] in which the author thanked the petitioner "for technical cost modeling." The petitioner also submitted copies of letters from 2001 and 2002 confirming his graduate studies at MIT and a summer internship at [redacted] Houston, Texas. None of these materials relate to the petitioner's present work with [redacted] they relate to his now-completed studies, and predate the founding of [redacted] by several years.

The director denied the petition on January 11, 2011. The director acknowledged the intrinsic merit of the petitioner's occupation, but found that the petitioner had not established its national scope or established his own impact and influence in that field.

On appeal, the petitioner observes that he has submitted letters from witnesses in Massachusetts and Texas, while he was (at the time he filed the appeal) based in California. The petitioner asserts that the national character of his work is therefore evident. This assertion is not persuasive, as he had studied and worked in Massachusetts with colleagues who later relocated to Texas. More generally, however, the petitioner's field of advertising consulting is not inherently local in scope, and national advertising campaigns are commonplace. Because the "national scope" prong of the *NYSDOT* national interest test relates to the occupation, rather than to the specific alien, the AAO will withdraw the director's finding that the petitioner's work lacks national scope.

The director had noted the lack of corroboration for the claim that the petitioner's work had transformed the automobile industry. The petitioner, on appeal, states: "The sensitive nature of the work and the results is the reason why it is taking so long for it to surface." Be that as it may, the record is devoid of evidence to support the claims made by witnesses who, themselves, are not in the automobile industry. The petitioner submits a copy of a 2003 expense invoice from [redacted] which the petitioner calls "a receipt of the meeting between me and the then director of the automotive sector of the consulting company." Indirect evidence that a meeting occurred is not sufficient to establish that the petitioner is responsible for "major restructuring of the US automotive industry." Furthermore, the petitioner does not explain how this meeting in 2003 has anything to do with his intended future work in "technology based network advertising." Evidence of success in one field does not ensure future success in a different field. In this instance, the petitioner has presented only unsubstantiated claims of success in one field. The evidence of record is barely sufficient to show that [redacted] actively conducts business, much less that the petitioner has had significant influence on his newly adopted field of technology based network advertising.

As is clear from a plain reading of the statute, possession of an advanced degree does not suffice to qualify one for an exemption from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

Beyond the director's decision, the AAO has identified a second, fundamental basis for denial of the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

By statute, the national interest waiver is available only to aliens of exceptional ability in the arts, sciences, or business, and to members of the professions holding advanced degrees. The petitioner has not specified which of these classifications he seeks, but his emphasis on his advanced degree leans toward the latter classification.

The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. The petitioner has not set forth any coherent claim to have met at least three of these standards.

The director, in the denial notice, stated: "The petitioner has submitted evidence that establishes that the beneficiary holds the requisite advanced degree required under Service law." The record indeed shows that the petitioner holds a Master of Science in Technology and Policy degree from MIT. An advanced degree, however, does not automatically qualify the petitioner for classification under

section 203(b)(2) of the Act. He must show that he is a member of the professions holding an advanced degree. Therefore, the petitioner must show that his occupation falls under the regulatory definition of a profession, specifically "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2).

Section 101(a)(32) of the Act reads: "The term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The petitioner's occupation is not among those listed. He must, therefore, establish that a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Without evidence to that effect, USCIS cannot properly classify the petitioner as a member of the professions holding an advanced degree.

The petitioner has documented his past employment in technology-related fields, but he submitted nothing to show that the lack of a bachelor's degree would actively prevent an individual from starting his or her own advertising consulting company, in the same way that, for example, a lack of such a degree would prevent one from working as a schoolteacher or physician. The occupations listed at section 101(a)(32) of the Act have professional standards and safeguards (such as licensure or certification requirements) to prevent the employment of unqualified individuals and, thereby, protect the integrity of the industry. The petitioner has not shown that advertising consulting has similar arrangements in place.

For the reasons discussed above, the petitioner has not met his burden of proof to show that he qualifies for classification as a member of the professions holding an advanced degree, or as an alien of exceptional ability in the sciences, the arts, or business. The AAO will therefore withdraw the director's finding that the petitioner's advanced degree is, by itself, sufficient evidence in this regard.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.